REMARKS

The Final Office Action mailed February 23, 2007, has been received and reviewed. Claims 10-30 are currently pending in the application. Claims 10-30 stand rejected. Applicant has amended claims 10, 17, 20 and 29, and respectfully requests reconsideration of the application as amended herein.

Claim Rejections under 35 U.S.C. § 103

Claims 10-29

Claims 10-29 were rejected as being unpatentable over U.S. Patent No. 6,175,550 to van Nee (hereinafter "the van Nee reference") in view of "Overview of Multicarrier CDMA," IEEE Comm. Mag., Dec. 1997, at 126 to Hara et al. (hereinafter "the Hara reference") and further in view of Applicant's Admitted Prior Art (herein after "AAPA") and further in view of U.S. Patent No. 6,810,030 to Kuo (hereinafter "the Kuo reference"). This rejection is respectfully traversed. Applicant respectfully traverses this rejection, as hereinafter set forth.

M.P.E.P. 706.02(j) sets forth the standard for a Section 103(a) rejection:

> To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, **the prior art reference (or references when combined) must teach or suggest all the claim limitations.** The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). (Emphasis added).

The 35 U.S.C. § 103(a) obviousness rejections of claims 10-29 are improper because the elements for a prima facie case of obviousness are not met. Specifically, the rejection fails to meet the criterion that the prior art reference must teach or suggest all the claims limitations.

Applicant has amended independent claims 10, 17, 20 and 29, from which claims 11-16, 18, 19, 21-28 and 30 depend, to each recite, in part, ***"a plurality of forward link frequency bins are allocated to carry different types of data"*** which is not taught or suggested in either the van Nee reference, the Hara reference, AAPA, or the Kuo reference.

The Final Office Action concedes:

> Van Nee in view of Hara in further view of Applicant's admitted prior art does not expressly disclose that the designation of the reverse link is responsive to loading. Kuo teaches, in a multi-carrier CDMA system (col. 2, lines 59-63), allocating a reverse link in response to loading (col. 2, lines 25-30, where "[b]ased on carrier utilization [i.e. loading]/interference level, carrier assignments are allocated on an unequal basis," see also col. 5, lines 61-64). Kuo does this "to achieve the goal of maximum utilization of potential capacity by equalizing the loading and interference across the carriers" (col. 4, lines 24-28). (Final Office Action, p. 5).

Specifically, the Kuo reference teaches or suggests "assign[ing] more bits [] into the carriers with less interference and less loading so that the associated interference in each carrier is roughly equalized". (Kuo, col. 3, lines 62-64). Therefore, since at least Applicant's claim element of ***"a plurality of forward link frequency bins are allocated to carry different types of data"*** is not taught or suggested in the cited references, either individually or in any proper combination, these cited references cannot render obvious under 35 U.S.C. §103 Applicant's invention as presently claimed.

Accordingly, since neither the van Nee reference, the Hara reference, the AAPA, nor the Kuo reference, either individually or in any proper combination, teach or suggest **all** of the claim limitations of Applicant's invention as recited in amended independent claims 10, 17, 20 and 29, from which claims 11-16, 18, 19, 21-28 and 30 depend, the van Nee reference, the Hara reference, AAPA, and the Kuo reference cannot render obvious under 35 U.S.C. § 103 Applicant's invention as claimed. Therefore, Applicant respectfully requests that such rejections be withdrawn.

Regarding dependent claims 11-16, 18, 19 and 21-28, the nonobviousness of an independent claim precludes a rejection of claims which depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See* In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, the Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claims 10, 17, 20 and claims 11-16, 18, 19, 21-28 which depend therefrom.

Claim 30

Claim 30 was rejected as being unpatentable over the van Nee reference in view of the Hara reference and further in view of AAPA and further in view of the Kuo reference and further in view of U.S. Patent No. 6,804,214 to Lundh et al.. This rejection is respectfully traversed. Applicant respectfully traverses this rejection, as hereinafter set forth.

The nonobviousness of independent claim 10 precludes a rejection of claim 30 which depends therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See* In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, the Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection of amended independent claim 10 and claim 30 which depends therefrom.

CONCLUSION

Claims 10-30 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, he is respectfully invited to contact Applicant's undersigned attorney.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

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